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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ME2 PRODUCTIONS, INC.,

9 Plaintiff,

10 v.

11 SIMON POULSON, *et al.*,

12 Defendants.

Case No. C17-0466RSL

ORDER REGARDING SERVICE
BY MAIL

13 This matter comes before the Court on plaintiff's "Motion to Permit Alternative
14 Mail Service or for Additional Time to Attempt Process Service." Dkt. # 19. Plaintiff has
15 not served two of the named defendants, and the 90 day deadline for service expired on
16 June 20, 2017. Two days later, plaintiff filed this motion seeking leave to serve Yotam
17 Shaked and Pamila Khounmany by mail or, in the alternative, for an extension of time in
18 which to serve.

19 **A. Service by Mail**

20 Federal Rule of Procedure 4(e)(1) allows plaintiff to effect service "pursuant to the
21 law of the state in which the district is located." Washington law authorizes service by
22 mail upon a showing that (a) defendant has made reasonably diligent efforts at personal
23 service (Rodriguez v. James-Jackson, 127 Wn. App. 139, 140 (2005)), and (b) defendant
24 resides in the state but has concealed herself in order to avoid service of process (RCW
25 4.28.100(4)). Plaintiff has made multiple unsuccessful attempts to personally serve
26 defendants Shaked and Khounmany. Lack of success in personal service does not

1 necessarily justify service by mail, however. The facts regarding Shaked and Khounmany
2 vary and must be considered separately.

3 With regards to Shaked, there is evidence that the named defendant resides at, or is
4 associated with, the address used by the process server. The server reported that
5 defendant answered the intercom at one point, but denied his identity. In addition, the
6 third-party server left a message through the intercom to which Shaked has apparently
7 declined to respond. All of the prerequisites for allowing service by mail are therefore
8 satisfied as to defendant Shaken, and there is reason to believe that service by mail will
9 effectively notify defendant of the claims against him.

10 With regards to defendant Khounmany, however, there is no indication that the
11 address used by the process server is, in fact, connected to defendant. In its motion,
12 plaintiff states that the address has been confirmed by the ISP “and/or investigative
13 databases,” citing counsel’s declaration as support. Dkt. # 19 at 2. The declaration is
14 silent regarding what information was provided by the ISP and what investigation was
15 done to confirm that the defendant could be found at the specified address. Nor is there
16 anything in the process server’s notes that ties Khounmany to the address used: there are
17 no names on the intercom in the apartment building in which Khounmany has been
18 sought and neither the manager nor a tenant confirmed her residence. Even if the Court
19 assumes that Comcast provided the address listed on the summons, the information was
20 provided in relation to internet usage in March 2017, more than three months ago. Absent
21 some evidence from which one could reasonably conclude that the defendant currently
22 resides at, or is associated with, the address used by the process server, the Court will not
23 assume that service by mail will effectively notify Khounmany of this lawsuit.

24 Second, there is no evidence from which one could reasonably conclude that
25 Khounmany is concealing herself for the purpose of avoiding service. None of the
26 entries made by the process server gives rise to an inference that the apartment was

1 occupied when the process server arrived and that the resident refused to answer the
2 door/intercom. The prerequisites for allowing service by mail are not, therefore, satisfied.
3 There being no reason to believe that service by mail at the addresses used by the process
4 server will effectively notify Khounmany of the claims against her, the motion for leave
5 to serve by mail is DENIED.

6 **B. Extension of Service Deadline**

7 It can be challenging to meet the 90 day service deadline in BitTorrent cases where
8 plaintiff must first conduct discovery from the ISP before it can identify, name, and serve
9 the defendant. It can be done, however, and the Court has repeatedly indicated that it
10 expects at least a good faith effort to comply with the service deadline. In this case, the
11 motion for leave to conduct expedited discovery was granted in a timely manner, and
12 plaintiff has not indicated that there was any delay in the ISP's response. As the Court has
13 previously noted, in these circumstances, an extension of time should be necessary only if
14 a defendant failed to waive or was dodging service.

15 Plaintiff asserts that Khounmany "elected not to return the request for waiver" of
16 service under Fed. R. Civ. P. 4(d). Dkt. # 19 at 1. There is no evidence that a waiver was
17 ever sent, however, much less that it was sent in a timely manner. The only evidence of
18 attempted service in the record shows that plaintiff engaged a process server twelve days
19 before the deadline for service. Plaintiff has not shown good cause for an extension of
20 time. Nevertheless, a brief extension of the service deadline will be granted in this case
21 because the Court had not previously considered this situation. In the future, however,
22 similar evidentiary showings will result in the dismissal of the claims against unserved
23 defendants.

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25 For all of the foregoing reasons, plaintiff's request for permission to serve
26 defendant Shaked by mail is GRANTED. The request to serve defendant Khounmany by

1 mail is DENIED. The alternative request for a fourteen day extension of the service
2 deadline to serve Khounmany is GRANTED. Plaintiff shall, on or before
3 July 5, 2017, file proofs of service as to defendants Shaken and Khounmany or a second
4 motion detailing the efforts made toward effecting personal service and establishing good
5 cause for a further extension of time. Failure to timely file or to make the required
6 showing will result in dismissal of the claims against any unserved defendants.

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8 Dated this 28th day of June, 2017.

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10 Robert S. Lasnik
11 United States District Judge
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